

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**FRANK A. CRISTAUDO**

Plaintiff,

v.

**BUSINESS PAYMENT SYSTEMS LLC  
et al.**

Defendants.

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CASE NO. 2004 CV 08782 (PKC)

PLAINTIFF'S REPLY TO  
DEFENDANTS' AMENDED  
VERIFIED ANSWER WITH  
COUNTERCLAIMS

Plaintiff, FRANK ALFRED CRISTAUDO ("Cristaudo" or "Plaintiff") by and through his attorneys, the Law Offices of Jerry S. Goldman & Associates, P.C., Jerry S. Goldman, Esquire and Gina M. Mac Neill, Esquire, of counsel, does reply and allege the following in response to Defendants' Amended Verified Answer ("Verified Answer"):<sup>1</sup>

**REPLY TO DEFENDANTS' FIRST AFFIRMATIVE DEFENSE.**

1. Plaintiff DENIES, each and every allegation and contests the arguments of Paragraph 57 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 57 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' SECOND AFFIRMATIVE DEFENSE.**

2. Plaintiff DENIES each and every allegation and contests the arguments of Paragraph 58 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 58 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' THIRD AFFIRMATIVE DEFENSE.**

3. Plaintiff DENIES each and every allegations and contests the arguments of Paragraph 59 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 59 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' FOURTH AFFIRMATIVE DEFENSE.**

4. Plaintiff DENIES each and every allegation and contests the arguments of Paragraph 60 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 60 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' FIFTH AFFIRMATIVE DEFENSE.**

5. Plaintiff DENIES each and every allegation and contests the arguments of Paragraph 61 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 61 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' SIXTH AFFIRMATIVE DEFENSE.**

6. Plaintiff DENIES each and every allegation of Paragraph 62 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 62 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

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<sup>1</sup> Upon consent, no response is being filed to the original Answer.

**REPLY TO DEFENDANTS' SEVENTH AFFIRMATIVE DEFENSE.**

7. Plaintiff DENIES each and every allegation of Paragraph 63 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 63 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' EIGHTH AFFIRMATIVE DEFENSE.**

8. Plaintiff DENIES each and every allegation of Paragraph 64 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 64 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' NINTH AFFIRMATIVE DEFENSE.**

9. Plaintiff DENIES each and every allegation of Paragraph 65 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 65 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' TENTH AFFIRMATIVE DEFENSE.**

10. Plaintiff DENIES, upon information and belief, each and every allegation of Paragraph 66 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 66 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' ELEVENTH AFFIRMATIVE DEFENSE.**

11. Plaintiff DENIES, upon information and belief, each and every allegation of Paragraph 67 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 67 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' TWELFTH AFFIRMATIVE DEFENSE.**

12. Plaintiff DENIES, upon information and belief, each and every allegation of Paragraph 68 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 68 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' THIRTEENTH AFFIRMATIVE DEFENSE.**

13. Plaintiff DENIES, upon information and belief, each and every allegation of Paragraph 69 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 69 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' FOURTEENTH AFFIRMATIVE DEFENSE.**

14. Plaintiff DENIES, upon information and belief, each and every allegation of Paragraph 70 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 70 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' FIFTEENTH AFFIRMATIVE DEFENSE.**

15. Plaintiff DENIES each and every allegation of Paragraph 71 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 71 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' SIXTEENTH AFFIRMATIVE DEFENSE.**

16. Plaintiff DENIES each and every allegation of Paragraph 72 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 72 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' SEVENTEENTH AFFIRMATIVE DEFENSE.**

17. Plaintiff DENIES each and every allegation of Paragraph 73 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 73 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' EIGHTEENTH AFFIRMATIVE DEFENSE.**

18. Plaintiff DENIES each and every allegation of Paragraph 74 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 74 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**PLAINTIFF'S REPLY TO COMMON FACTUAL ALLEGATIONS RELEVANT TO  
DEFENDANTS' COUNTERCLAIMS.**

19. Responding to Paragraph 75 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses to Defendants' Affirmative Defenses, Paragraphs 1-18 above, as if fully set forth herein.

20. Plaintiff admits to Paragraph 76 of the Verified Answer.

21. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 77 of the Verified Answer, and as such, DENIES same.

22. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 78 of the Verified Answer, and as such, DENIES same.

23. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 79 of the Verified Answer, and as such, DENIES same.

24. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 80 of the Verified Answer, and as such, DENIES same, except generally admits that certain reports were provided to BPS based upon Plaintiff's specifications.

25. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 81 of the Verified Answer, and as such, DENIES same, except that the MIS had certain reporting functions.

26. Plaintiff DENIES each and every allegation set forth in Paragraph 82 of the Verified Answer; to the contrary BPS hired Mr. Cristaudo as a consultant to develop the MIS.

27. Plaintiff DENIES each and every allegation set forth in Paragraph 83 of the Verified Answer.

28. Plaintiff DENIES each and every allegation contained in Paragraph 84 of Defendants' Verified Answer.

29. Plaintiff DENIES each and every allegation contained in Paragraph 85 of Defendants' Verified Answer.

30. Plaintiff DENIES each and every allegation contained in Paragraph 86 of Defendants' Verified Answer.

31. Plaintiff DENIES each and every allegation contained in Paragraph 87 of Defendants' Verified Answer.

32. Plaintiff DENIES each and every allegation contained in Paragraph 88 of Defendants' Verified Answer.

33. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 89 of the Verified Answer, and as such, DENIES same.

34. Plaintiff DENIES each and every allegation contained in Paragraph 90 of Defendants' Verified Answer.

35. Plaintiff DENIES each and every allegation contained in Paragraph 91 of Defendants' Verified Answer.

36. Plaintiff DENIES each and every allegation contained in Paragraph 92 of Defendants' Verified Answer.

37. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 93 of the Verified Answer, and as such, DENIES same.

38. Plaintiff DENIES each and every allegation contained in Paragraph 94 of Defendants' Verified Answer.

39. Plaintiff DENIES each and every allegation contained in Paragraph 95 of Defendants' Verified Answer.

40. Plaintiff DENIES each and every allegation contained in Paragraph 96 of Defendants' Verified Answer.



41. Plaintiff DENIES each and every allegation contained in Paragraph 97 of Defendants' Verified Answer. By way of further answer, Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 97 of the Verified Answer, and as such, DENIES same.

**REPLY TO DEFENDANTS' FIRST COUNTERCLAIM**

**COPYRIGHT INFRINGEMENT**

42. Responding to Paragraph 98 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-41 of this Reply as if fully set forth herein.

43. Plaintiff DENIES each and every allegation contained in Paragraph 99 of Defendants' Verified Answer.

44. Plaintiff DENIES each and every allegation contained in Paragraph 100 of Defendants' Verified Answer.

45. Plaintiff DENIES each and every allegation and arguments contained in Paragraph 101 of Defendants' Verified Answer.

46. Plaintiff ADMITS each and every allegation contained in Paragraph 102 of Defendants' Verified Answer.

47. Plaintiff ADMITS each and every allegation contained in Paragraph 103 of Defendants' Verified Answer.

48. Plaintiff DENIES each and every allegation and arguments contained in Paragraph 104 of Defendants' Verified Answer. By way of further answer, Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 104 of the Verified Answer, and as such, DENIES same.

49. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 105 of the Verified Answer, and as such, DENIES same.

50. Plaintiff DENIES the allegations contained in Paragraph 106 of Defendants' Verified Answer.

51. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 107 of the Verified Answer, and as such, DENIES same.

52. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 108 of the Verified Answer, and as such, DENIES same.

**REPLY TO DEFENDANTS' SECOND COUNTERCLAIM**

**BREACH OF CONTRACT**

53. Responding to Paragraph 109 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference the allegations set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-52 of this Reply as if fully set forth herein.

54. Plaintiff DENIES each and every allegation contained in Paragraph 110 of Defendants' Verified Answer.

55. Plaintiff DENIES each and every allegation contained in Paragraph 111 of Defendants' Verified Answer.

56. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 112 of the Verified Answer, and as such, DENIES same.

57. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 113 of the Verified Answer, and as such DENIES same. By way of further answer, Plaintiff denies that he was grossly incompetent, was a recalcitrant worker, and that he failed to build a working and useable MIS. To the extent that the system was not working and not usable, it was a result of improper and/or erroneous specifications and/or negligent and/or willful internal errors and/or actions and/or wrongdoing

and/or misconduct of Defendants Blau and/or Chanin to the detriment of BPS and/or other errors and/or omissions of the defendants or its employees or agents.

58. Plaintiff DENIES each and every allegation contained in Paragraph 114 of Defendants' Verified Answer. By way of further answer, to the extent that the system is flawed it was a result of improper and/or erroneous specifications and/or negligent and/or willful internal errors and/or actions and/or wrongdoing and/or misconduct of Defendants Blau and/or Chanin to the detriment of BPS and/or other errors and/or omissions of the defendants or its employees or agents.

59. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 115 of the Verified Answer, and as such, DENIES same.

60. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 116 of the Verified Answer, and as such, DENIES same. By way of further answer, to the extent that BPS' reputation was injured and/or to the extent that there was lost business, it was the result of the actions and/or inactions of the defendants Blau, Lee, and/or Chanin and other employees and agents acting under their direction and supervision and/or the lack thereof.

61. Plaintiff DENIES each and every allegation contained in Paragraph 117 of Defendants' Verified Answer.

62. Plaintiff DENIES each and every allegation contained in Paragraph 118 of Defendants' Verified Answer.

63. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 119 of the Verified Answer, and as such, DENIES same.

**REPLY TO DEFENDANTS' THIRD COUNTERCLAIM**

**UNJUST ENRICHMENT**

64. Responding to Paragraph 120 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation as set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-63 of this Reply as if fully set forth herein.

65. Plaintiff DENIES each and every allegation contained in Paragraph 121 of Defendants' Verified Answer; to the contrary, the plaintiff was as an independent contractor.

66. Plaintiff DENIES each and every allegation contained in Paragraph 122 of Defendants' Verified Answer.

67. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 123 of the Verified Answer, and as such, DENIES same. By way of further answer, the Plaintiff performed his services in a workmanlike, professional and competent manner.

68. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 124 of the Verified Answer, and as such DENIES same. By way of further answer, Plaintiff denies that he was grossly incompetent, was a recalcitrant worker, and that he failed to build a working and useable MIS. To the extent that the system was not working and not usable, it was a result of improper and/or erroneous specifications and/or negligent and/or willful internal errors and/or actions and/or wrongdoing and/or misconduct of Defendants Blau and/or Chanin to the detriment of BPS and/or other errors and/or omissions of the defendants or its employees or agents.

69. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 125 of the Verified Answer, and as such, DENIES same. By way of further answer, Plaintiff denies that the MIS was flawed and defective. By way of further answer, to the extent that the system was or is flawed it is a result of improper and/or erroneous specifications and/or negligent and/or willful internal errors and/or actions and/or wrongdoing and/or misconduct of Defendants Blau and/or Chanin to the detriment of BPS and/or other errors and/or omissions of the defendants or its employees or agents.

70. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 126 of the Verified Answer, and as such, DENIES same.

71. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 127 of the Verified Answer, and as such, DENIES same. By way of further answer, to the extent that BPS' reputation was injured and/or

to the extent that there was lost business, it was the result of the actions and/or inactions of the defendants Blau, Lee, and/or Chanin and other employees and agents acting under their direction and supervision and/or the lack thereof.

72. Plaintiff DENIES each and every allegation contained in Paragraph 128 of Defendants' Verified Answer.

73. Plaintiff DENIES each and every allegation contained in Paragraph 129 of Defendants' Verified Answer.

74. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 130 of the Verified Answer, and as such, DENIES same.

75. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 131 of the Verified Answer, and as such, DENIES same.

#### **REPLY TO DEFENDANTS' FOURTH COUNTERCLAIM**

##### **CONVERSION**

76. Responding to Paragraph 132 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-75 of this Reply as if fully set forth herein.

77. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 133 of the Verified Answer, and as such, DENIES same.

78. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 134 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 134 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

79. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 135 of the Verified Answer, and as such, DENIES same.

80. Plaintiff DENIES each and every allegation contained in Paragraph 136 of Defendants' Verified Answer, except that, as admitted above in response to Paragraphs 102 and 103 of Defendant's Verified Answer, Plaintiff has obtained copyright protection for the MIS.

81. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 137 of the Verified Answer, and as such, DENIES same.

82. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 138 of the Verified Answer, and as such, DENIES same.



83. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 139 of the Verified Answer, and as such, DENIES same.

**REPLY TO DEFENDANTS' FIFTH COUNTERCLAIM**

**TORTIOUS INTERFERENCE WITH PROSPECTIVE CONTRACTUAL RELATIONS**

84. Responding to Paragraph 140 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-83 of this Reply as if fully set forth herein.

85. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 141 of the Verified Answer, and as such, DENIES same.

86. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 142 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 142 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

87. Plaintiff DENIES each and every allegation contained in Paragraph 143 of Defendants' Verified Answer

88. Plaintiff DENIES each and every allegation contained in Paragraph 144 of Defendants' Verified Answer except that, as admitted above in response to Paragraphs 102 and 103 of Defendant's Verified Answer, Plaintiff has obtained copyright protection for the MIS.

89. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 145 of the Verified Answer, and as such, DENIES same.

**REPLY TO DEFENDANTS' SIXTH COUNTERCLAIM**

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

90. Responding to Paragraph 146 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-89 of this Reply as if fully set forth herein.

91. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 147 of the Verified Answer, and as such, DENIES same.

92. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 148 of the Verified Answer, and as such, DENIES same.

93. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 149 of the Verified Answer, and as such, DENIES same.

**REPLY TO DEFENDANTS' SEVENTH COUNTERCLAIM**

**BREACH OF FIDUCIARY DUTY**

94. Responding to Paragraph 150 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-93 of this Reply as if fully set forth herein.

95. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 151 of the Verified Answer, and as such, DENIES same.

96. Plaintiff DENIES each and every allegation and arguments contained in Paragraph 152 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 152 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

97. Plaintiff DENIES each and every allegation contained in Paragraph 153 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 153 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

98. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 154 of the Verified Answer, and as such, DENIES same.

99. Plaintiff DENIES each and every allegation and arguments contained in Paragraph 155 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 155 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' EIGHTH COUNTERCLAIM**

**BREACH OF DUTY OF LOYALTY**

100. Responding to Paragraph 156 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-99 of this Reply as if fully set forth herein.

101. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 157 of the Verified Answer, and as such, DENIES same.

102. Plaintiff DENIES each and every allegation contained in Paragraph 158 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 158 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

103. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 159 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 159 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

104. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 160 of the Verified Answer, and as such, DENIES same.

105. Plaintiff DENIES each and every allegation and arguments contained in Paragraph 161 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 161 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

### **REPLY TO DEFENDANTS' NINTH COUNTERCLAIM**

#### **MISAPPROPRIATION OF TRADE SECRETS**

106. Responding to Paragraph 162 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-105 of this Reply as if fully set forth herein.

107. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 163 of the Verified Answer, and

as such, DENIES same. By way of further answer, the matters contained in Paragraph 163 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

108. . Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 164 of the Verified Answer, and as such, DENIES same.

109. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 165 of the Verified Answer, and as such, DENIES same.

110. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 166 of the Verified Answer, and as such, DENIES same, except that it is DENIED that there was any agreement or understanding that the Defendant's Trade Secrets would remain confidential but it is admitted that the Plaintiff's Trade Secrets would remain confidential.

111. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 167 of the Verified Answer, and as such, DENIES same. It is DENIED that the Plaintiff's trade secrets are and remain the sole and exclusive property of the Defendants.

112. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 168 of the Verified Answer, and as such, DENIES same.

113. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 169 of the Verified Answer, and as such, DENIES same.

114. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 170 of the Verified Answer, and as such, DENIES same.

115. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 171 of the Verified Answer, and as such, DENIES same.

116. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 172 of the Verified Answer, and as such, DENIES same.

117. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 173 of the Verified Answer, and as such, DENIES same.

118. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 174 of the Verified Answer, and as such, DENIES same.

119. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 175 of the Verified Answer, and

as such, DENIES same. By way of further answer, the matters contained in Paragraph 175 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' TWELFTH COUNTERCLAIM – UNFAIR  
COMPETITION<sup>2</sup>**

120. Responding to Paragraph 176 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-119 of this Reply as if fully set forth herein.

121. Plaintiff DENIES each and every allegation contained in Paragraph 177 of Defendants' Verified Answer.

122. Plaintiff DENIES each and every allegation contained in Paragraph 178 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 178 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

123. Plaintiff DENIES each and every allegation contained in Paragraph 179 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 179 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

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<sup>2</sup> The First Amended Answer contains no counterclaims denominated the Tenth or the Eleventh. This reply will match the numbering scheme set forth in the First Amended Answer.



124. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 180 of the Verified Answer, and as such, DENIES same.

125. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 181 of the Verified Answer, and as such, DENIES same.

126. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 182 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 182 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' THIRTEENTH COUNTERCLAIM**

**TORTIOUS BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR  
DEALING**

127. Responding to Paragraph 183 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-126 of this Reply as if fully set forth herein.

128. Plaintiff DENIES each and every allegation and arguments contained in Paragraph 184 of Defendants' Verified Answer; rather, as vendor and contributor, they owed the

duty to each other. By way of further answer, the matters contained in Paragraph 184 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

129. Plaintiff DENIES each and every allegation contained in Paragraph 185 of Defendants' Verified Answer. By way of further answer, the matters contained in Paragraph 185 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

130. Plaintiff DENIES each and every allegation contained in Paragraph 186 of Defendants' Verified Answer.

131. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 187 of the Verified Answer, and as such, DENIES same.

132. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 188 of the Verified Answer, and as such, DENIES same.

133. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 189 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 189 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' FOURTEENTH CAUSE OF ACTION (COUNTERCLAIM)**

**REQUEST FOR A DECLARATORY JUDGMENT**

134. Responding to Paragraph 190 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-133 of this Reply as if fully set forth herein.

135. Plaintiff admits to each and every allegation contained in Paragraph 191 of Defendants' Verified Answer.

136. Plaintiff admits to each and every allegation contained in Paragraph 192 of Defendants' Verified Answer.

137. Plaintiff DENIES each and every allegation contained in Paragraph 193 of Defendants' Verified Answer. To the contrary, it is requested that the relief sought in Paragraph 193 of the Second Amended Complaint be granted. By way of further answer, the matters contained in Paragraph 193 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' FIFTEENTH CAUSE OF ACTION (COUNTERCLAIM)**

**BREACH OF EXPRESS WARRANTY**

138. Responding to Paragraph 194 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204

of the Second Amended Complaint and the responses contained in Paragraphs 1-133 of this Reply as if fully set forth herein.

139. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 195 of the Verified Answer, and as such, DENIES same.

140. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 196 of the Verified Answer, and as such, DENIES same.

141. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 197 of the Verified Answer, and as such, DENIES same.

142. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 198 of the Verified Answer, and as such, DENIES same. By way of further answer, Defendant Blau represented that he was possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system.

143. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 199 of the Verified Answer, and as such, DENIES same. By way of further answer, it is specifically denied that the plaintiff received a salary from the defendant.

144. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 200 of the Verified Answer, and as such, DENIES same, except that he DENIES that the MIS was flawed and defective.

145. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 201 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 202 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' SIXTEENTH CAUSE OF ACTION (COUNTERCLAIM)**

**BREACH OF IMPLIED WARRANTY**

146. Responding to Paragraph 202 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-145 of this Reply as if fully set forth herein.

147. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 203 of the Verified Answer, and as such, DENIES same.

148. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 204 of the Verified Answer, and as such, DENIES same

149. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 205 of the Verified Answer, and as such, DENIES same by way of further answer, Defendant Blau represented that he was possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system.

150. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 206 of the Verified Answer, and as such, DENIES same.

151. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 207 of the Verified Answer, and as such, DENIES same. By way of further answer, it is specifically denied that the plaintiff received a salary from the defendant.

152. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 208 of the Verified Answer, and as such, DENIES same, except that he DENIES that the MIS was flawed and defective.

153. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 209 of the Verified Answer, and as such, DENIES same. By way of further answer, the matters contained in Paragraph 209 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

**REPLY TO DEFENDANTS' SEVENTEENTH CAUSE OF ACTION**  
**(COUNTERCLAIM)**

**MISREPRESENTATION AND FRAUD**

154. Responding to Paragraph 210 of the Verified Answer, Plaintiff repeats, realleges and incorporates by reference each and every allegation set forth in Paragraphs 1-204 of the Second Amended Complaint and the responses contained in Paragraphs 1-153 of this Reply as if fully set forth herein.

155. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 211 of the Verified Answer, and as such, DENIES same by way of further answer, Defendant Blau represented that he was possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system.

156. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 212 of the Verified Answer, and as such, DENIES same by way of further answer, Defendant Blau represented that he was possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system.

157. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 213 of the Verified Answer, and as such, DENIES same by way of further answer, Defendant Blau represented that he was

possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system.

158. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 214 of the Verified Answer, and as such, DENIES same by way of further answer, Defendant Blau represented that he was possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system. By way of further answer, the matters contained in Paragraph 214 of the Verified Answer consist of matters of law to which the Plaintiff DENIES.

159. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 215 of the Verified Answer, and as such, DENIES same by way of further answer, Defendant Blau represented that he was possessed of the skill and judgment requisite to supervise the installation of the system and conveyed the specifications and requirements for the system.

160. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 216 of the Verified Answer, and as such, DENIES same

161. Plaintiff states that he lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation in Paragraph 217 of the Verified Answer, and as such, DENIES same



**AS AND FOR PLAINTIFF'S FIRST AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

162. Defendants' Counterclaims are barred to the extent this Court lacks subject matter jurisdiction.

**AS AND FOR PLAINTIFF'S SECOND AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

163. Defendants' Counterclaims are barred by the applicable Statute of Limitations.

**AS AND FOR PLAINTIFF'S THIRD AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

164. Defendants' Counterclaims are barred because Defendant lacks standing to sue because Defendants are not the valid legal or beneficial owner of the copyrights in question.

**AS AND FOR PLAINTIFF'S FOURTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

165. Defendants' Counterclaims are barred because Defendants' alleged claim copyrights are invalid.

**AS AND FOR PLAINTIFF'S FIFTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

166. Defendants' Counterclaims are barred because Defendants' Verified Answer fails to state a claim upon which relief may be granted.

**AS AND FOR PLAINTIFF'S SIXTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

167. Defendants' Counterclaims are barred by the doctrine of equitable estoppel.

**AS AND FOR PLAINTIFF'S SEVENTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

168. Defendants' Counterclaims are barred by the statute of frauds.

**AS AND FOR PLAINTIFF'S EIGHTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

169. Defendants' Counterclaims are barred by the doctrine of unclean hands.

**AS AND FOR PLAINTIFF'S NINTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

170. Defendants' Counterclaims are barred by the doctrine of laches.

**AS AND FOR PLAINTIFF'S TENTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

171. Defendants' counterclaims grounded in state law are barred because they are preempted by Federal copyright law.

**AS AND FOR PLAINTIFF'S ELEVENTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

172. Defendants have a complete and adequate remedy at law for damages against Plaintiff and therefore they are not entitled to the Declaratory Judgment that they seek in their Fifteenth Counterclaim.

**AS AND FOR PLAINTIFF'S TWELFTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

173. Defendants' Second, Fifteenth, Sixteenth, and Seventeenth Counterclaims is barred by doctrine of failure of consideration.

**AS AND FOR PLAINTIFF'S THIRTEENTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

174. Defendants' Fifth, Sixth, Seventh, Eighth, Ninth, Twelfth, Fifteenth, Sixteenth and Seventeenth Counterclaims are barred by a lack of a lawful duty.

**AS AND FOR PLAINTIFF'S FOURTEENTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

175. Defendant's Second, Fifth, Sixth, Seventh, Eighth, Ninth, Eleventh, Thirteenth, Fifteenth, Sixteenth and Seventeenth Counterclaims are barred by the statute of frauds, G.O.L. Section 5-701,

**AS AND FOR PLAINTIFF'S FIFTHTEEN AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

176. Defendant's Blau, Chanin and Lee First Counterclaim is barred as they lack standing to sue as they can not be the legal or beneficial owner of an exclusive right under a valid copyright as they were, on information and belief, at all relevant times employees of the defendant BPS, and under the work for hire doctrine such rights would vest in their defendant-employer.

**AS AND FOR PLAINTIFF'S SIXTEENTH AFFIRMATIVE DEFENSE TO THE  
DEFENDANTS' COUNTERCLAIMS**

177. Defendant's Blau, Chanin and Lee First Counterclaim is barred as did not create an individual work of authorship.

**RELIEF REQUESTED**

178. WHEREFORE, Plaintiff prays that this Honorable Court:

- i. Deny the relief requested in Defendants' Counterclaims;
- ii. Grant the relief requested in Plaintiff's Second Amended Complaint; and,
- iii. Grant Plaintiff such other relief as this Honorable Court deems to be just and equitable.

Dated: June 2, 2005  
New York, N.Y.

LAW OFFICES OF JERRY S. GOLDMAN  
& ASSOCIATES, P.C.

By: \_\_\_\_\_  
JERRY S. GOLDMAN, ESQUIRE (JG 8445)

\_\_\_\_\_  
GINA MAC NEILL, ESQUIRE (GM 0581)

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**CERTIFICATION OF SERVICE**

I hereby certify that on this date I served the foregoing Reply to Defendants' Verified Answer upon counsel for the defendants, by filing same with the Court's Electronic Filing System, and mailing a copy of same, postage prepaid and properly addressed as follows:

Danile B. Faizekoff  
150 Broadway, 14<sup>th</sup> Floor  
New York, NY 10038

Dated: June 2, 2005

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GINA M. MAC NEILL, ESQUIRE